

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

In re:

Case No.: 9:13-bk-00479-FMD
Chapter: 13

ELSA JUDITH ONTANEDA
f/k/a ELSA JUDITH ONTANEDA-MARTINEZ

Debtor.

/

**MOTION TO DETERMINE SECURED STATUS OF GREEN TREE SERVICING
AND TO STRIP LIEN EFFECTIVE UPON DISCHARGE**

NOTICE OF OPPORTUNITY TO OBJECT AND FOR HEARING

Pursuant to Local Rule 2002-4, the Court will consider this motion without further notice or hearing unless a party in interest files an objection within thirty (30) days from the date of service of this paper. If you object to the relief requested in this paper, you must file your objection with the Clerk of the Court at 801 N. Florida Avenue, Suite 555, Tampa, FL 33602-3899, and serve a copy on the movant's attorney, Juan J. Piles, Esq., 4905 Chiquita Boulevard, Suite 103, Cape Coral, Florida 33914.

If you file and serve an objection within the time permitted, the Court may schedule a hearing and you will be notified. If you do not file an objection within the time permitted, the Court will consider that you do not oppose the granting of the relief requested in this paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

COMES NOW, ELSA JUDITH ONTANEDA (the "Debtor"), by and through the undersigned counsel, and files this Motion to Determine Secured Status of Green Tree Servicing and to Strip Lien and States as follows:

1. The Debtor filed a petition for relief under Chapter 13 of the Bankruptcy Code on January 15, 2013.

2. The Debtor owns real property (the "Real Property") located at 911 S.E. 34th Terrace, Cape Coral, Florida 33904, Florida, and more particularly described as follows:

Lot(s) 24 and 25, Block 492 of Cape Coral, Unit 15, as recorded in Plat Book 13, Page 69 to 75, et seq., of the Public Records of Lee County, Florida.

3. The Real Property is encumbered by two mortgages:
 - a. Wells Fargo Bank, N.A., account number 93602589973, holds the first mortgage, as recorded 10/30/2007, in Instrument #2007000327085, of the Public Records of Lee County, Florida, and assigned to them from SunTrust Mortgage, Inc. on 10/12/2011, in Instrument #2011000222037, of the Public Records of Lee County, Florida and has filed no claim. The principal balance as of the date of filing the petition is \$185,979.00.
 - b. Green Tree Servicing, account number 680978731, holds a second mortgage, recorded on 04/02/2008, in Instrument #2008000086512, of the Official Records of Lee County, Florida and assigned to them from Bank of America, NA, and has filed Claim No. 1-1 in the amount of \$24,337.02. The principal balance as of the date of filing is \$24,337.02.
4. Based on the county valuation by the Lee County Property Appraiser attached hereto as Exhibit "A", the value of the Real Property is \$119,704.00.
5. Accordingly, Green Tree Servicing's second mortgage is completely unsecured.

WHEREFORE, the Debtor respectfully requests that the Court enter an order:

- (a) Granting the Motion;
- (b) Determining the value of the Real Property to be \$119,704.00,
- (c) Determining that Green Tree Servicing's claim shall be treated as an unsecured claim;
- (d) Voiding the mortgage lien of Green Tree Servicing effective upon discharge;
and
- (e) Granting such other and further relief as the Court deems appropriate.

DECLARATION

The undersigned Debtors named in the foregoing Motion to Value Collateral and Strip Second Mortgage hereby make solemn oath that the statements and figures contained herein are true and correct to the best of Debtor's knowledge, information and belief.

11/19/13
Date



Elsa Judith Ontaneda

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished on this 19th day of November, 2013 to:

Regular Mail and/or electronically:

U.S. Trustee, 501 E. Polk Street, Suite 1200, Tampa, Florida 33602
Jon M. Waage, Esq., Chapter 13 Trustee, PO Box 25001, Bradenton, Florida 34206-5001
Elsa Judith Ontaneda,

Via Certified Mail:

Mr. Keith Anderson, President of Green Tree Servicing, 345 St. Peter Street, St. Paul, MN 55102. (Certified Mail No. 70120470000154356748)

Hershel R. Hoyt, Bankruptcy Supervisor, 345 St. Peter Street, St. Paul, MN 55102.
(Certified Mail No. 70120470000154356755)

JUAN J. PILES, ESQUIRE
4905 Chiquita Boulevard South
Suite 103
Cape Coral, Florida 33914
Telephone: (239) 443-5900
Facsimile: (888) 267-9061

/s/ Juan J. Piles.
Juan J. Piles, Esquire
Florida Bar Number 0145645

Property Data for Parcel 06-45-24-C1-00492.0240

Owner Of Record

ONTANEDA ELSA
911 SE 34TH TER
CAPE CORAL FL 33904

Site Address

911 SE 34TH TER
CAPE CORAL FL 33904

Legal Description

CAPE CORAL UNIT 15
BLK 492 PB 13 PG 70
LOTS 24 + 25

Classification / DOR Code

SINGLE FAMILY RESIDENTIAL / 01

[Tax Map Viewer]



Image of Structure



10096747 1 02/21/2008

[◀ Photo Date February of 2008 ▶](#)

[Pictometry Aerial Viewer]



Property Values (2013 Tax

Roll)

Exemptions

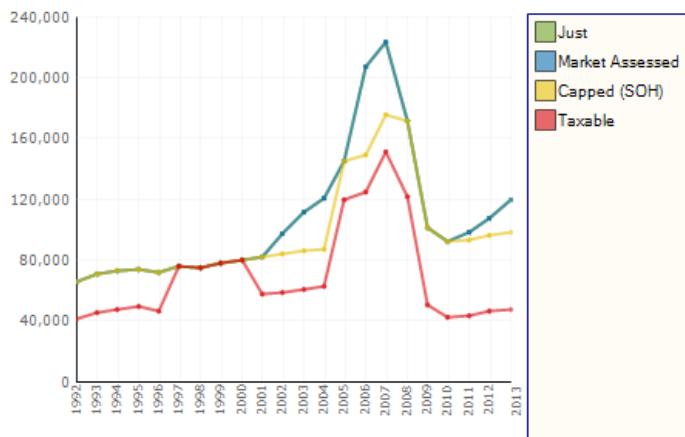
Attributes

		Homestead / Additional	25,000 / 25,000	Land Units Of Measure	UT
Just	119,704	Widow / Widower	0 / 0	Units	1.00
Assessed	119,704	Disability	0	Frontage	80
Portability Applied	0	Wholly	0	Depth	125
Cap Assessed	97,688	Senior	0	Total Number of Buildings	1
Taxable	47,688	Agriculture	0	Total Bedrooms / Bathrooms	3 / 2.0
Cap Difference	22,016			Total Living Area	1,921
				1st Year Building on Tax Roll	1981
				Historic District	No

Property Value History

Tax Year	Just	Market Assessed	SOH Assessed	Taxable	Source
1992	65,730	65,730	65,730	40,730	ROLL
1993	70,580	70,580	70,580	45,580	ROLL
1994	72,316	72,316	72,316	47,320	SOH
1995	73,820	73,820	73,820	48,820	SOH
1996	71,770	71,770	71,770	46,770	SOH
1997	75,300	75,300	75,300	75,300	ROLL
1998	74,300	74,300	74,300	74,300	ROLL
1999	78,060	78,060	78,060	78,060	ROLL
2000	80,140	80,140	80,140	80,140	ROLL
2001	82,150	82,150	82,150	57,150	SOH
2002	96,670	96,670	83,460	58,460	SOH
2003	111,390	111,390	85,470	60,470	SOH
2004	120,990	120,990	87,090	62,090	SOH
2005	144,810	144,810	144,810	119,810	SOH
2006	206,450	206,450	149,150	124,150	SOH
2007	223,620	223,620	175,770	150,770	E&I
2008	171,370	171,370	171,370	121,370	SOH
2009	100,770	100,770	100,770	50,770	SOH
2010	91,879	91,879	91,879	41,879	SOH
2011	98,586	98,586	93,257	43,257	SOH
2012	106,806	106,806	96,055	46,055	SOH
2013	119,704	119,704	97,688	47,688	SOH

Parcel Value History for Parcel 06-45-24-C1-00492.0240



The **Just** value is the total parcel assessment (less any considerations for the cost of sale). This is the closest value to Fair Market Value we produce and is dated as of January 1st of the tax year in question ([F.A.C. 12D-1.002](#)).

The **Market Assessed** value is the total parcel assessment (less any considerations for the cost of sale) based upon the assessment standard. Most parcels are assessed based either upon the Highest and Best Use standard or the Present Use standard ([F.S. 193.011](#)). For Agriculturally Classified parcels (or parts thereof), only agricultural uses are considered in the assessment ([F.S. 193.461 \(6\) \(a\)](#)). The difference between the Highest and Best Use/Present Use and the Agricultural Use is often referred to as the Agricultural Exemption.
(i.e. Market Assessed = Just - Agricultural Exemption)

The **Capped (SOH) Assessed** value is the Market Assessment after any Save Our Homes cap is applied. This assessment cap is applied to all Homesteaded properties and limits year-to-year assessment increases to either the Consumer Price Index or 3%, whichever is lower. Some Homestead Exempt taxing authorities use this assessment to calculate a parcel's taxes.
(i.e. Capped (SOH) Assessed = Market Assessed - SOH Cap)

The **Taxable** value is the Capped (SOH) Assessment after any personal exemptions, such as Homestead, are applied to it. This is the value that most taxing authorities use to calculate a parcel's taxes.
(i.e. Taxable = Capped (SOH) Assessed - Exemptions)

Taxing Authorities

CITY OF CAPE CORAL / REDEVELOPMENT EXPANSION 2 / 279

Name / Code	Category	Mailing Address
LEE CO GENERAL REVENUE / 044	County	LEE COUNTY BUDGET SERVICES PO BOX 398 FORT MYERS FL 33902-0398
LEE CO ALL HAZARDS PROTECTION DIST / 101	Dependent District	LEE COUNTY BUDGET SERVICES PO BOX 398 FORT MYERS FL 33902-0398
LEE CO LIBRARY DIST / 052	Dependent District	LEE COUNTY BUDGET SERVICES PO BOX 398 FORT MYERS FL 33902-0398
MUNICIPAL SOLID WASTE DISPOSAL MSTU / 116	Dependent District	LEE COUNTY BUDGET SERVICES PO BOX 398 FORT MYERS FL 33902-0398
LEE CO HYACINTH CONTROL DIST / 051	Independent District	VIVIAN H. JONES 15191 HOMESTEAD RD LEHIGH ACRES FL 33971
LEE CO MOSQUITO CONTROL DIST / 053	Independent District	VIVIAN H. JONES 15191 HOMESTEAD RD LEHIGH ACRES FL 33971
WEST COAST INLAND NAVIGATION DIST / 098	Independent District	CHARLES W LISTOWSKI EXECUTIVE DIRECTOR 200 MIAMI AVE E VENICE FL 34285-2408
CITY OF CAPE CORAL / 014	Municipal	VICTORIA BATEMAN FINANCIAL SERVICES DIRECTOR PO BOX 150027 CAPE CORAL FL 33915-0027
PUBLIC SCHOOL - BY LOCAL BOARD / 012	Public Schools	AMI DESAMOURS BUDGET DEPARTMENT 2855 COLONIAL BLVD FORT MYERS FL 33966
PUBLIC SCHOOL - BY STATE LAW / 013	Public Schools	AMI DESAMOURS BUDGET DEPARTMENT 2855 COLONIAL BLVD FORT MYERS FL 33966
CITY OF CAPE CORAL DEL PRADO ALLEY IMP / 255	Voter Approved	VICTORIA BATEMAN FINANCIAL SERVICES DIRECTOR PO BOX 150027 CAPE CORAL FL 33915-0027
SFWMD-DISTRICT-WIDE / 110	Water District	MICHELLE QUIGLEY 3301 GUN CLUB RD WEST PALM BEACH, FL 33406
SFWMD-EVERGLADES CONSTRUCTION PROJECT / 084	Water District	MICHELLE QUIGLEY 3301 GUN CLUB RD WEST PALM BEACH, FL 33406
		MICHELLE QUIGLEY

Sales / Transactions

Sale Price	Date	OR Number	Type	Description	Vacant/Improved
100.00	08/18/2011	2011000187961	11	Sales disqualified as a result of examination of the deed Corrective deed, quit claim deed, or tax deed; Deed bearing Florida Documentary Stamp at the minimum rate prescribed under Chapter 201, F.S.; Transfer of ownership where no doc stamps were paid.	I
0.00	06/16/2011	2011000140458	11	Sales disqualified as a result of examination of the deed Corrective deed, quit claim deed, or tax deed; Deed bearing Florida Documentary Stamp at the minimum rate prescribed under Chapter 201, F.S.; Transfer of ownership where no doc stamps were paid.	I
183,000.00	07/26/2004	4432/1755	06	Sales qualified and included for sales ratio analysis Qualified (Fair Market Value / Arms Length / One STRAP #)	I
90,000.00	06/29/1999	3141/850	06	Sales qualified and included for sales ratio analysis Qualified (Fair Market Value / Arms Length / One STRAP #)	I
84,500.00	04/01/1990	2149/2111	06	Sales qualified and included for sales ratio analysis Qualified (Fair Market Value / Arms Length / One STRAP #)	I
0.00	09/01/1987	1969/3242	03	Sales disqualified as a result of examination of the deed Disqualified (Interest Sales / Court Docs / Government)	I

Building/Construction Permit Data

Permit Number	Permit Type	Date
05-30327	Pool & Spa	09/21/2005
50614590	Fence	05/07/1990
02-5232	Roof	04/02/2002
07-11351	Shutter, Awning	07/03/2007
07-17823	Building Miscellaneous	12/06/2007
02-8935	Roof	06/10/2002
441881	Residential	04/07/1981

IMPORTANT INFORMATION: THIS MAY NOT BE A COMPREHENSIVE OR TIMELY LISTING OF PERMITS ISSUED FOR THIS PROPERTY.

Note: The Lee County Property Appraiser's Office does not issue or maintain any permit information. The Building/Construction permit data displayed here represents only those records this Office may find necessary to conduct Property Appraiser business. Use of this information is with the understanding that in no way is this to be considered a comprehensive listing of permits for this or any other parcel.

The Date field represents the date the property appraiser received information regarding permit activity; it may or not represent the actual date of permit issuance or completion.

Full, accurate, active and valid permit information for parcels can only be obtained from the [appropriate permit issuing agency](#).

Parcel Numbering History

Prior STRAP	Renumber Reason	Renumber Date
01-45-23-A7-00492.0240	Reserved for Renumber ONLY	01/26/1997

Solid Waste (Garbage) Roll Data

Solid Waste District	Roll Type	Category	Unit / Area	Tax Amount
- UNKNOWN	-	-	0	0.00

Flood and Storm Information

[Flood Insurance \[FIRM Look-up \]](#)

Storm Surge Zone	Evacuation Zone	Community	Panel	Version	Date
B	B	125095	0405	F	8/28/2008

Appraisal Details

Land

Land Tracts

Use Code	Use Code Description	Depth	Frontage	Number of Units	Unit of Measure
100	Single Family Residential	125	80	1.00	Units
Land Features					
Description				Year Added	Units
FENCE - WOOD - SOLID BOARD				1990	100
IRRIGATION SYSTEM LAWN				1981	1
FENCE - ALUM/VINYL - 6 FEET				2010	174

Buildings

Building 1 of 1

Building Characteristics

Improvement Type	Model Type	Stories	Bedrooms	Bathrooms	Year Built	Effective Year Built
102 - Ranch	1 - single family residential	1.0	3	2.0	1981	1983

Building Subareas

Description	Heated / Under Air	Area (Sq Ft)
BAS - BASE	Y	1,921
FGR - FINISHED GARAGE	N	537
FOP - FINISHED OPEN PORCH	N	252
FSP - FINISHED SCREEN PORCH	N	69
PS1 - 1 STORY SCREEN ENCL	N	383
PS1 - 1 STORY SCREEN ENCL	N	345
PTO - PATIO	N	252

Building Features

Description	Year Added	Units
POOL - RESIDENTIAL	2006	345
PATIO - CONCRETE	2006	383

Building Front Photo

Building Footprint



10096747 1 02/21/2008

Photo Date : February of 2008

